

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,

Plaintiff,

vs.

MICRON TECHNOLOGY, INC.;
MICRON SEMICONDUCTOR
PRODUCTS, INC.; MICRON
TECHNOLOGY TEXAS LLC,

Defendants.

Case No. 2:22-cv-203-JRG

JURY TRIAL DEMANDED

**DEFENDANTS' OBJECTIONS TO ORDER ON NETLIST MOTION FOR
PROTECTIVE ORDER DKT. NO. 439**

Pursuant to Fed. R. Civ. P. 72 and Local Rule CV-72, Micron submits the following objections to Magistrate Judge Payne's Order (Dkt. No. 455 "the Order") granting Netlist's Motion for a Protective Order (Dkt. No. 439).

The Court should allow the deposition of Mr. Chi-She Chen, a key witness and the first named inventor on two of Netlist's asserted patents. It is undisputed that Netlist provided improper contact information for Mr. Chen throughout most of the litigation. It is also undisputed that the parties agreed to schedule other depositions relating to the two Chen-patents after the discovery cut-off period to occur in late January 2024, due to the uncertainty of the PTAB finding the patents invalid in early December 2023. The Court should allow the deposition to occur for at least these reasons and the reasons set forth herein and in prior briefing.

Netlist's October 31, 2022 initial disclosures identified the contact information for one of the inventors on Netlist's asserted patents, Mr. Chi-She Chen, as Irell & Manella (Netlist's counsel). *See* Dkt. No. 181-2. It is undisputed that this was a false identification. Netlist's counsel

did not represent Mr. Chen. Netlist maintained this representation for a year of the discovery period and prevented Micron from interviewing Mr. Chen. As observed by the Magistrate Judge, Netlist effectively (and improperly) told Micron to “leave [the deponent] alone; [and] proceed through [Irell] counsel” only. 10/23/23 Hrg. Tr. at 37:1-2.

When at the end of the discovery period, Netlist refused to confirm a deposition, refused to provide contact information, and suddenly claimed they did not represent Mr. Chen, Micron moved to take deposition out of time. *See* Dkt. No. 181. The Court granted that motion on October 23, 2023. Dkt. No. 255.

Shortly thereafter, on December 5-6, the PTAB issued decisions finding all of the claims, in the patents where Mr. Chen is a named inventor, invalid. *See* IPR Nos. 2022-00999 and 2022-00996. Due to the uncertainty of Netlist proceeding on invalid patents, the parties responded by scheduling expert depositions for these Chen-patents for after the Court had a chance to rule on Micron’s motion to stay. *See, e.g.*, Dkt. No. 453 at 3 (noting the parties moved the expert depositions to January 15 and 24th, 2024). Micron also identified, without objection, that it is still “scheduling the deposition of” Mr. Chen “(per the Court’s Order Dkt. No. 255), which is a deposition of a third-party that can potentially be avoided by staying the case.” Dkt. No. 348 at 3.

Micron arranged for the Chen deposition within two weeks of the Court recommending denial of Micron’s motion to stay (Dkt. No. 416), which confirmed that the parties would be going to trial on the two Chen-patents. Micron first scheduled the deposition for January 17. Dkt. No. 451-2 at 4. Netlist’s counsel objected to the timing, alleging vague scheduling issues, and filed a motion for a protective order. Dkt. No. 451-2 at 3-2. In light of Netlist’s alleged scheduling issues, Micron reset the deposition to January 22 as an accommodation. Dkt. No. 451-2 at 1. Netlist waited three days until late Friday afternoon, with the deposition starting on Monday, to allege that Irell

is “not available that date, given all the conflicts noted in our motion for a protective order.” Dkt. No. 451-3. Micron then reset the deposition for January 31, which Netlist refused again. *See* Dkt. No. 453 at 3.

The Magistrate Judge granted Netlist’s motion for a protective order stating that the “Micron’s failure to proceed with the deposition promptly after the Court’s grant of leave in October constitutes a waiver of that right.” Dkt. No. 455 at 2.

Micron respectfully objects to the Magistrate Judge’s order as erroneous. Netlist improperly blocked Micron from interviewing this witness for the entirety of the discovery period. Indeed, Netlist did not even identify that its counsel did not represent Mr. Chen until *two months* after Micron served deposition notices on Irell seeking the deposition. *See* Dkt. No. 181 at 2-6. In comparison to Netlist’s lengthy delay in correcting its false information, Micron scheduled the Chen deposition rather quickly after the Court’s order and very quickly after the Court denied Micron’s motion to stay. Nor can Netlist argue unfair prejudice. The parties agreed to schedule certain depositions related to the Chen-patents for after the discovery cutoff period, Netlist never objected to Micron’s notice that it is still scheduling the Chen deposition, and Micron offered several dates for the Chen deposition to accommodate Netlist’s schedule.

There is still time in the schedule for Micron to take the Chen deposition. Micron understands that Mr. Chen’s counsel does not object to the deposition. Mr. Chen is an important witness and is the first named inventor on two of Netlist’s asserted patents. For at least these reasons, Micron requests that the Court sustain Micron’s objections and allow the deposition to proceed.

Dated: February 7, 2024

Respectfully submitted,

/s/ Michael R. Rueckheim

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CERTIFICATE OF SERVICE

I certify that, on February 7, 2024, a copy of the foregoing was served on all counsel of record via the Court's ECF system and email.

/s/ Michael R. Rueckheim
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